IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6023 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NISHA EDUCATION TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR MUKUND M DESAI for Petitioner(s) : 1,
MR RM DESAI for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3,
MR AD OZA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/01/2007

ORAL JUDGMENT

1. In this petition,the petitioner trust running a Secondary School for Girls has challenged the

decision of the State Government in not granting the facility of grant in aid. It is prayed that suitable directions be given providing such facilities to the petitioner with effect from June, 1999.

2. It may be noted that though initially the respondents had not granted any permission whatsoever to the petitioner to start such a school subsequently by an order dated 24th January, 1999, such permission was granted which permitted the petitioner to start the school with retrospective effect from June, 1998. However, this order was conditional on petitioner not seeking any grant from the Government. Grievance of the petitioner is that the petitioner trust runs a Secondary Girls school for which grant is necessary and the petitioner is entitled to seek such grant as per the then prevailing Government policy. It is stated that though the petitioner accepted the permission granted by the Government to start such a school without any aid and has been running such a school since then, the petitioner cannot be discriminated regarding the question of giving grant in aid facility.

3. On the other hand, learned AGP Shri Jaswant Shah appearing for the State Government and learned advocate Shri Arun Oza appearing for the Secondary Board opposed the petition and

submitted that the petitioner once having accepted the order of the Government permitting the petitioner to start the School without grant in aid facility, at this stage, now cannot insist that grant must be released.

4. By a common judgement dated 5th July, 2006 passed in group of petitions being Special Civil Application No.6381/1998 and connected matters, this Court had the occasion to take into account several matters of similar nature. It was found that there are allegations of discrimination and arbitrary applications of Government policies at the hands of Government authorities. This Court therefore, had taken note of the stand of the Government in laying down more specific and clearer guidelines for consideration of cases for giving grant and on given suitable directions for formulating such policy through Government Resolution. This Court had also found that the management which had started such schools without the facility of grant, may not be precluded from seeking such facility for all times to come and if they can make out a case for being covered under the prevailing policy, subject to budgetary allocations, their cases shall have to be considered at-least prospectively.

5. The present case is covered by the said judgement dated 5th July, 2006.The request of the

petitioner for consideration for payment of grant cannot be rejected solely on the ground that previously Government granted permission to start the school without grant in aid facility. However, whether the case of the petitioner is covered by the Government policy and whether the budgetary allocation would permit the Government to cover the petitioner within the grant in aid umbrella has to be judged by the authorities at-least in the first instance.

6. In view of this situation, it is provided that if the petitioner applies within a period of two weeks from today to the State authorities for being given the grant in aid facility for its Secondary Girls school, such application shall be considered expeditiously and preferably within a period of three months from the date of receipt thereof. Such consideration shall be on the basis of prevailing Government policy and bearing in mind the observations made by this Court in about judgement dated 5th July, 2006.

7. Learned advocate Shri Chauhan for the petitioner submitted that the case of the petitioner is covered for special consideration. If the petitioner makes out such a case, I am sure the Government will examine such an issue in accordance with law and prevailing Government policy.

8. With these directions,the petition is disposed of. Rule is made absolute to the above extent. No costs.

(Akil Kureshi,J.)

(raghu)